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November 19, 2018

By CM/ECF

The Chambers of the Honorable Judge Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Elliott v. Donegan, et al.*, No. 1:18-civ-05680-LDH-SJB

Dear Judge Bulsara

I write on behalf of Defendant Moira Donegan, who has not yet been served in this case.¹

On October 18, 2018, the Court entered an Order scheduling an initial conference for December 10, 2018. ECF No. 9. According to that Order and under the Federal Rules of Civil Procedure, the parties must meet and confer regarding a discovery schedule on or before today, November 19. We have repeatedly tried to discuss these matters with opposing counsel, but to no avail. This has made it impossible for us to seek consent to a stay of discovery or to address any other discovery-related matters. We are now pushing up against the first discovery deadlines in the case. Ms. Donegan therefore requests a stay of all discovery and an adjournment of our initial conference at least until Ms. Donegan has completed a Rule 4 form waiving service.

Since October 15, I have emailed and called Plaintiff's counsel, Andrew Miltenberg, numerous times to request (1) a Federal Rule of Civil Procedure 4(d) form to waive service on Ms. Donegan and (2) an agreement to stay discovery pending the outcome of a motion to dismiss. On October 18, Mr. Miltenberg called my office, but I missed his call. I called back and emailed many times over the next five days. In emails, he twice acknowledged my efforts to contact him. He never addressed the substance of Ms. Donegan's two requests, however, and we never spoke.

On October 25, I spoke by phone with Mr. Miltenberg's co-counsel, Nicholas Lewis. Mr. Lewis noted that Mr. Miltenberg was at trial and likely would be unavailable until early the following week, around October 29. Mr. Lewis indicated that he could not address Ms. Donegan's two requests himself, but he said he would raise them with Mr. Miltenberg.

¹ Ms. Donegan submits this letter without waiving any arguments under Federal Rules of Civil Procedure 8 and 12, including but not limited to insufficient service or service of process, improper venue, lack of jurisdiction, and insufficient notice of which claims are alleged against which defendants.

Since then, more than three weeks have passed. We have heard nothing from Mr. Miltenberg or his colleagues. I again emailed Mr. Miltenberg on November 14, reminding him that the parties have a looming deadline to meet and confer. He has not replied to that email.

To date, Ms. Donegan has not been served, despite my stated willingness to accept service on her behalf. Further, she intends to seek a stay of discovery pending a motion to dismiss—whether with Mr. Miltenberg’s consent or through filing a motion. For these reasons, we respectfully request an adjournment of the December 10, 2018 conference and any attendant discovery deadlines. We propose that the conference not be rescheduled at least until after Plaintiff notifies the Court that Ms. Donegan has completed a Rule 4 form waiving service.

Ms. Donegan has not previously requested an adjournment or extension of time. This request affects no other scheduled Court dates. Opposing counsel has not consented to this request because, as described, we have been unable to discuss it with him.

By filing this letter, I certify pursuant to Federal Rule of Civil Procedure 37(a)(1) that I in good faith attempted to confer with Plaintiff’s counsel in an effort to comply with the Court’s October 18, 2018 Order and obtain a stay of discovery without Court action.

Respectfully Submitted,

/s/ Roberta A. Kaplan

Roberta A. Kaplan, Esq.
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